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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DEQ 16-2023

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

FILED

11/16/2023 2:20 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary: Heavy-Duty Engine and Vehicle Exhaust Emission Standards

EFFECTIVE DATE: 01/01/2024 THROUGH 06/28/2024

AGENCY APPROVED DATE: 11/16/2023

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NEED FOR THE RULE(S):

What need is DEQ trying to address?

CARB recently proposed significant and necessary amendments to the HD Omnibus rules. The delayed timing of the proposed CARB amendments, lack of detailed criteria related to the sale of legacy engines and uncertainty over when compliant engines will be available in 2024 will likely create significant restrictions to the supply of new medium- and heavy-duty vehicles. Some manufacturers have informed DEQ that they would be placing a temporary hold on the sale of new diesel engines in the state. Announcements of temporary holds have raised concern among fleet owners and managers that there will be a further tightening of the supply of new medium- and heavy-duty vehicles. Existing supply chain problems leading to significant backorders and long delays in projected vehicle delivery timelines mean that fleets have not been able to get the vehicles that they need over the previous year. Any temporary hold on vehicle delivery into Oregon in 2024 would exacerbate these already existing market conditions.

How would the proposed rule address the need?

The proposed temporary rule would delay the implementation of the HD Omnibus rules for one year. It will provide the manufacturers and buyers with compliance certainty for the year 2024 and allow the delivery and sale of legacy engines for an additional year. If the proposed temporary rules are adopted, the HD Omnibus rules go into effect with engine model year 2025 and/or vehicle model year 2026 depending on the specific rule section. The temporary rules would provide more time to consider and permanently adopt significant and necessary legacy engine amendments that CARB plans to finalize just prior to the end of 2023. Delayed implementation will also allow for CARB to develop a more detailed approval process for legacy engine offset projects.

JUSTIFICATION OF TEMPORARY FILING:

Finding of serious prejudice

Failing to act promptly would result in serious prejudice to the interests of vehicle and engine manufacturers, public and private fleets that are seeking to acquire new medium- and/or heavy-duty vehicles in 2024 and vehicle dealers that sell new medium- and heavy-duty vehicles. If the EQC fails to act, public and private fleets may not be able to purchase compliant new medium- and heavy-duty vehicles as their needs dictate, vehicle dealers may need to stop selling or sell

fewer new medium- and heavy-duty vehicles and vehicle and engine manufacturers may stop selling these vehicles and engines into Oregon.

Consequences of not taking immediate action

If the commission does not adopt these temporary proposed rules, DEQ's existing rules would conflict with California's rules once they are amended at the end of 2023. This conflict would likely create risk for companies selling new medium- and heavy-duty internal combustion engines in Oregon which could lead to temporary stoppages of sales of these new engines into Oregon. This supply restriction could create problems for both public and private fleets that need to purchase new vehicles in 2024 either as replacements or for fleet expansion. Not taking action could also harm businesses that rely on revenue from the sale of these vehicles since it is not clear that an equal supply of zero emission vehicles would be sold in their place.

Affected parties

- Public and private fleets that need to acquire new medium- and/or heavy-duty vehicles in 2024
- Vehicle dealerships that sell new medium- and heavy-duty vehicles with internal combustion engines
- Vehicle manufacturers that sell medium- and heavy-duty vehicles with internal combustion engines
- Engine manufacturers that sell internal combustion engines that are included in medium- and heavy-duty vehicles

Why or how failing to act immediately would cause the harm described above

The harm described above would occur if EQC does not act immediately because engine manufacturers would likely place temporary holds on the sale of new medium- and heavy-duty engines into Oregon. That would likely lead to a cascade of impacts that are described above.

How temporary rule would avoid or mitigate consequences

If EQC adopts the proposed temporary amendment, this will prevent the harm described above because delayed implementation would provide more time to consider and permanently adopt significant and necessary legacy engine amendments that CARB plans to finalize just prior to the end of 2023. Delayed implementation will also allow for CARB to develop a more detailed approval process for legacy engine offset projects. The projects are necessary when NOx or Zero Emission Vehicle (ZEV) credits are not available to replace deficits from the sale of legacy engines. Delay will also allow for potential NOx credit reporting improvements and NOx and zero emission credit pooling processes for Section 177 states. Further reasons for the delay include the ability to learn from the California implementation for model year 2024, a greater likelihood of increased availability of HD Omnibus compliant engines on the market for engine model year 2025 and giving more time for US EPA to approve the California waiver that Section 177 of the federal Clean Air Act requires prior to implementation.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

California Air Resources Board Staff Report: Initial Statement of Reasons – Proposed Amendments to the Heavy-Duty Engine and Vehicle Omnibus Regulation

<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2023/hdomnibus2023/isor.pdf>

California Air Resources Board and the Truck and Engine Manufacturers Association Clean Truck Partnership Agreement [https://ww2.arb.ca.gov/sites/default/files/2023-](https://ww2.arb.ca.gov/sites/default/files/2023-07/Final%20Agreement%20between%20CARB%20and%20EMA%202023_06_27.pdf)

[07/Final%20Agreement%20between%20CARB%20and%20EMA%202023_06_27.pdf](https://ww2.arb.ca.gov/sites/default/files/2023-07/Final%20Agreement%20between%20CARB%20and%20EMA%202023_06_27.pdf)

HOUSING IMPACT STATEMENT:

The proposed temporary rule amendment seeks to delay implementation of the Emission Standards for New Heavy-Duty Trucks (HD Omnibus) in OAR Chapter 340, Division 261 by one year. The temporary proposed rule would delay the start of these new regulations from engine model year 2024 to engine model year 2025.

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules would have no effect on development costs because they only affect manufacturers and of new medium- and heavy-duty vehicles and engines. While indirect impacts to transportation costs that are related to the supply of new medium- and heavy-duty vehicles are possible, DEQ is unable to estimate the extent of such an impact. However, that impact would likely be to avoid an increase in the price of new vehicles associated with supply restrictions and lack of market availability of HD Omnibus compliant engines.

NOTE: Additional PDF filed with this filing not included in this document. Please contact Department of Environmental Quality for a copy of this document.

RULES:

340-261-0020, 340-261-0040, 340-261-0050

AMEND: 340-261-0020

RULE TITLE: Applicability

RULE SUMMARY: Delaying the date of implementation until 2025.

RULE TEXT:

This division is in effect as of January 1, 2022 and applies to and establishes requirements for medium- and heavy-duty truck, engine and trailer manufacturers, Oregon truck dealers, all 2025 and subsequent model year on-highway heavy-duty engines, and all 2026 and subsequent model year trucks and trailers delivered for sale or sold in the State of Oregon, except as provided in OAR 340-261-0060 Exemptions.

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468A.025, 468A.360, ORS 468.020, ORS 468A.025, 468A.360

STATUTES/OTHER IMPLEMENTED: ORS 468A.025, 468A.360, ORS 468A.010, 468A.015, 468A.050, 468A.279, ORS 468A.025, 468A.360, ORS 468A.010, 468A.015, 468A.050, 468A.279

AMEND: 340-261-0040

RULE TITLE: Requirement to Meet California Vehicle Emission Standards

RULE SUMMARY: Delaying the date of implementation until 2025.

RULE TEXT:

(1) Starting with the 2025 engine model year and for each engine model year thereafter no person may deliver for sale, or sell, in Oregon any new on-highway heavy-duty engine unless such engine is certified to the California emission standards as required under OAR 340-261-0050, except as provided in OAR 340-261-0060, Exemptions.

(2) Starting with the 2026 model year and for each model year thereafter no person may deliver for sale, or sell, in Oregon any new medium- or heavy duty truck or trailer unless such vehicle is certified to the California emission standards as required under OAR 340-261-0050, except as provided in OAR 340-261-0060, Exemptions.

(3) All motor medium- and heavy-duty truck and trailer manufacturers and dealers must comply with the sales and reporting requirements contained in this division.

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468A.025, 468A.360

STATUTES/OTHER IMPLEMENTED: ORS 468A.025, 468A.360, ORS 468A.010, 468A.015, 468A.050, 468A.279

AMEND: 340-261-0050

RULE TITLE: Incorporation by Reference

RULE SUMMARY: Delaying the date of implementation until 2025.

RULE TEXT:

- (1) For purposes of applying the incorporated sections of the California Code of Regulations described in this rule, "California" means "Oregon" and "Air Resources Board (ARB)" or "California Air Resources Board (CARB)" means Department of Environmental Quality (DEQ) or Environmental Quality Commission (EQC) depending on context, unless otherwise specified in this division or the application is clearly inappropriate.
- (2) The sections of the California Code of Regulations (CCR), Title 13 and Title 17, adopted by reference in sections (3) and (4) are in addition to, and compatible with, the CCR, Title 13, standards and requirements adopted by reference under OAR 340-257-0050. It is the intent of this rule that the standards and requirements adopted by reference under OAR 340-257-0050 also apply in Oregon to the on-highway medium- and heavy-duty engines, vehicles and trailers regulated by the CCR, Title 13 and Title 17, standards and requirements adopted by reference in this rule, to the same extent and identical to how they would apply in California.
- (3) Emission standards, testing procedures, warranty, reporting, enforcement, recall and other California provisions adopted by reference. Each manufacturer of new 2025 and subsequent model year on-highway medium- and heavy-duty engines and 2026 and subsequent model year trucks and trailers must comply with each of the following applicable standards specified in CCR, Title 13 as incorporated by reference herein:
- (a) Section 1956.8(a) – (f) and (i): Exhaust Emission Standards and Test Procedures – 1985 and Subsequent Model Heavy Duty Engines and Vehicles. California adopted date 9/9/21. Except that CCR Title 13, Section 1956.8(a)(2)(F) "Transit Agency Diesel-Fueled Bus Engine Exemption Request" shall be disregarded and is not incorporated by reference.
- (b) Section 1971.1: On-Board Diagnostic System Requirements – 2010 and Subsequent Model-Year Heavy-Duty Engines. California adopted date 9/9/21.
- (c) Section 2036: Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles; and 2020 and Subsequent Model Year Trailers. California adopted date 9/9/21.
- (d) Section 2121: Penalties. California adopted date 9/9/21. Except that the reference in this regulation to "a violation of Health and Safety Code Section 43105" shall be disregarded and is not incorporated by reference.
- (e) Section 2137: Vehicle, Engine, and Trailer Selection. California adopted date 9/9/21.
- (f) Section 2139: Testing. California adopted date 9/9/21.
- (g) Section 2139.5: CARB Authority to Test for Heavy-Duty In-Use Compliance. California effective date 04/21/03.
- (h) Section 2140: Notification and Use of Test Results. California adopted date 9/9/21.
- (i) Section 2166: General Provisions. California adopted date 9/9/21.
- (j) Section 2166.1: Definitions. California adopted date 9/9/21.
- (k) Section 2167: Required Recall and Corrective Action for Failures of Exhaust After-Treatment Devices, On-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors. California adopted date 9/9/21.
- (l) Section 2168: Required Corrective Action and Recall for Emission-Related Component Failures. California adopted date 9/9/21.
- (m) Section 2169: Required Recall or Corrective Action Plan. California adopted date 9/9/21.
- (n) Section 2169.1: Approval and Implementation of Corrective Action Plan. California adopted date 9/9/21.
- (o) Section 2169.2: Notification of Owners. California adopted date 9/9/21.
- (p) Section 2169.3: Repair Label. California adopted date 9/9/21.
- (q) Section 2169.4: Proof of Correction Certificate. California adopted date 9/9/21.
- (r) Section 2169.5: Preliminary Tests. California 9/9/21 date 9/9/21.

- (s) Section 2169.6: Communication with Repair Personnel. California adopted date 9/9/21.
- (t) Section 2169.7: Recordkeeping and Reporting Requirements. California adopted date 9/9/21.
- (u) Section 2169.8: Extension of Time. California adopted date 9/9/21.
- (v) Section 2423(n): Exhaust Emission Standards and Test Procedures – Off-Road Compression-Ignition Engines. California adopted date 9/9/21.
- (w) Section 2485: Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling. California adopted date 9/9/21.
- (4) Emission standards, testing procedures, warranty, reporting, enforcement, recall and other California provisions adopted by reference. Each manufacturer of new 2026 and subsequent model year on-highway medium- and heavy-duty vehicles and trailers must comply with each of the following applicable standards specified in CCR, Title 17 as incorporated by reference herein:
 - (a) Section 95660: Purpose. California effective date 1/1/2015.
 - (b) Section 95661: Applicability. California effective date 1/1/2015.
 - (c) Section 95662: Definitions. California 9/9/21 date 9/9/21.
 - (d) Section 95663: Greenhouse Gas Exhaust Emission Standards and Test Procedures for New 2014 and Subsequent Model Heavy-Duty Vehicles. California adopted date 9/9/21.

STATUTORY/OTHER AUTHORITY: ORS 468.020, ORS 468A.025, 468A.360

STATUTES/OTHER IMPLEMENTED: ORS 468A.025, 468A.360, ORS 468A.010, 468A.015, 468A.050, 468A.279